

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOHNNY ARGUELLO,

Plaintiff,

vs.

No. 2:12-cv-00432-JAP-LAM

**DAYNA ARGUELLO, STATE OF NEW
MEXICO, and KERI PATTISON, individually and
in her official capacity, and JOHN and JANE
DOES I-V, ABC CORPORATIONS I-V, and XYZ
PARTNERSHIPS I-V,**

Defendants.

**ORDER DENYING WITHOUT PREJUDICE
MOTION TO PRODUCE RECORDINGS (Doc. 56)**

THIS MATTER is before the Court on Plaintiff's *Motion to Produce Recordings (Doc. 56)*, filed August 31, 2012. Defendant Pattison filed a response on September 5, 2012. [*Doc. 59*]. No reply to the motion has been filed and the time for doing so has passed. Having considered the motion, response and record of this case, the Court **FINDS** that the motion shall be **DENIED without prejudice**.

Discovery in this case has been limited to the issue of qualified immunity regarding Defendant Pattison pending the Court's ruling on the qualified immunity issue concerning Defendant Pattison. *See Scheduling Order (Doc. 26)* (submitted to the Court by the parties). The deadline for completing this limited discovery was August 6, 2012. *Id.* at 3. In Plaintiff's motion, Plaintiff states that on August 17, 2012, his counsel received a copy of a confidential intake report from Defendants, and that counsel for Defendants has refused to produce to Plaintiff a copy of a

recording of the caller of the “APS/CPS Intake Report.” [*Doc. 56* at 1]. Plaintiff asks the Court to compel production of the recording. *Id.* In response, Defendant Pattison states that Plaintiff never submitted interrogatories or requests for production to her requesting this information, and that she does not know “whether a recording of Defendant Pattison’s January 22, 2010 call to Statewide Central Intake exists.” [*Doc. 59* at 1 and 2]. Plaintiff further states that she does not have a copy of the recording. *Id.* at 2.

The Court finds that Plaintiff’s motion is deficient. If Plaintiff is seeking relief pursuant to Fed. R. Civ. P. 37, Plaintiff is required to attach a copy of the interrogatory or request for production to which Plaintiff alleges Defendants have failed to adequately respond, and Plaintiff failed to do so. *See* D.N.M. LR-Civ. 37.1. If, however, Plaintiff contends that this recording is required for his briefing of the summary judgment motion, then a motion under Fed. R. Civ. P. 56(d) would be the appropriate method in which to seek the recording. *See* Fed. R. Civ. P. 56(d) (explaining that a court may allow discovery “[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition” to a summary judgment motion). For these reasons, the Court finds that the motion is deficient and should be denied without prejudice.

IT IS THEREFORE ORDERED that the Plaintiff’s *Motion to Produce Recordings* (*Doc. 56*) is **DENIED without prejudice**.

IT IS SO ORDERED.



LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE